

1 MONIQUE C. WINKLER (Cal. Bar No. 213031)
SUSAN F. LAMARCA (Cal. Bar No. 215231)
2 lamarcas@sec.gov
JENNIFER J. LEE (Cal. Bar No. 261399)
3 leejen@sec.gov
DAVID ZHOU (NY Bar No. 4926523)
4 zhoud@sec.gov
ANTHONY J. MORENO (Cal. Bar No. 219220)
5 morenoa@sec.gov

6 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 44 Montgomery Street, Suite 2800
San Francisco, CA 94104
8 Telephone: (415) 705-2500
Facsimile: (415) 705-2501

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 SECURITIES AND EXCHANGE COMMISSION,
14
15 Plaintiff,
16
17 v.
18 GRANITE CONSTRUCTION, INC.,
Defendant.

Case No.

**CONSENT OF DEFENDANT GRANITE
CONSTRUCTION, INC.**

19 **CONSENT OF DEFENDANT GRANITE CONSTRUCTION, INC.**

20 Defendant Granite Construction, Inc. ("Defendant") waives service of a summons and the
21 complaint in this action, enters a general appearance, and admits the Court's jurisdiction over
22 Defendant and over the subject matter of this action.

23 1. Without admitting or denying the allegations of the complaint (except as to personal
24 and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of
25 the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference
26 herein, which, among other things:

- 27 (a) permanently restrains and enjoins Defendant from violation of Section 17(a) of
28 the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and

Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) 78m(b)(2)(B)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13] thereunder; and

(c) orders Defendant to pay a civil penalty in the amount of \$12,000,000 under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

I.

Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, the civil penalty shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant agrees that it shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant’s payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant’s payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Securities and Exchange Commission’s (“Commission”) counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

2. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any

1 insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final
2 Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution
3 fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim,
4 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any
5 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such
6 penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit
7 of investors.

8 Defendant acknowledges that the Court is not imposing a civil penalty in excess of
9 \$12,000,000 based on Defendant's agreement to cooperate in a Commission investigation and/or
10 related enforcement action. Defendant consents that if at any time following the entry of the Final
11 Judgment the Commission obtains information indicating that Defendant knowingly provided
12 materially false or misleading information or materials to the Commission or in a related proceeding,
13 the Commission may, at its sole discretion and without prior notice to the Defendant, petition the
14 Court for an order requiring Defendant to pay an additional civil penalty. In connection with the
15 Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant
16 will be precluded from arguing that it did not violate the federal securities laws as alleged in the
17 Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any
18 related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion,
19 shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised
20 in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative
21 testimony, and documentary evidence without regard to the standards for summary judgment
22 contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the
23 parties may take discovery, including discovery from appropriate non-parties.

24 3. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule
25 52 of the Federal Rules of Civil Procedure.

26 4. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the
27 Final Judgment.

1 5. Defendant enters into this Consent voluntarily and represents that no threats, offers,
2 promises, or inducements of any kind have been made by the Commission or any member, officer,
3 employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

4 6. Defendant agrees that this Consent shall be incorporated into the Final Judgment with
5 the same force and effect as if fully set forth therein.

6 7. Defendant will not oppose the enforcement of the Final Judgment on the ground, if
7 any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby
8 waives any objection based thereon.

9 8. Defendant waives service of the Final Judgment and agrees that entry of the Final
10 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its
11 terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty
12 days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration
13 stating that Defendant has received and read a copy of the Final Judgment.

14 9. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted
15 against Defendant in this civil proceeding. Defendant acknowledges that no promise or
16 representation has been made by the Commission or any member, officer, employee, agent, or
17 representative of the Commission with regard to any criminal liability that may have arisen or may
18 arise from the facts underlying this action or immunity from any such criminal liability. Defendant
19 waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the
20 imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's
21 entry of a permanent injunction may have collateral consequences under federal or state law and the
22 rules and regulations of self-regulatory organizations, licensing boards, and other regulatory
23 organizations. Such collateral consequences include, but are not limited to, a statutory
24 disqualification with respect to membership or participation in, or association with a member of, a
25 self-regulatory organization. This statutory disqualification has consequences that are separate from
26 any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding
27 before the Commission based on the entry of the injunction in this action, Defendant understands that
28 it shall not be permitted to contest the factual allegations of the complaint in this action.

1 10. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e),
2 which provides in part that it is the Commission's policy "not to permit a defendant or respondent to
3 consent to a judgment or order that imposes a sanction while denying the allegations in the complaint
4 or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the
5 defendant or respondent states that he neither admits nor denies the allegations." As part of
6 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take
7 any action or make or permit to be made any public statement denying, directly or indirectly, any
8 allegation in the complaint or creating the impression that the complaint is without factual basis; (ii)
9 will not make or permit to be made any public statement to the effect that Defendant does not admit
10 the allegations of the complaint, or that this Consent contains no admission of the allegations, without
11 also stating that Defendant does not deny the allegations; and (iii) upon the filing of this Consent,
12 Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation
13 in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to
14 vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph
15 affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in
16 litigation or other legal proceedings in which the Commission is not a party.

17 11. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small
18 Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from
19 the United States, or any agency, or any official of the United States acting in his or her official
20 capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
21 expended by Defendant to defend against this action. For these purposes, Defendant agrees that
22 Defendant is not the prevailing party in this action since the parties have reached a good faith
23 settlement.

24 12. In connection with this action and any related judicial or administrative proceeding or
25 investigation commenced by the Commission or to which the Commission is a party, Defendant (i)
26 agrees to appear and be interviewed by Commission staff at such times and places as the staff
27 requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices
28 or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or

1 trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's
 2 undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to
 3 such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the
 4 Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the
 5 testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S.
 6 Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United
 7 States District Court for purposes of enforcing any such subpoena.

8 13 Defendant agrees that the Commission may present the Final Judgment to the Court
 9 for signature and entry without further notice.

10 14 Defendant agrees that this Court shall retain jurisdiction over this matter for the
 11 purpose of enforcing the terms of the Final Judgment.

12 Dated: 7/27/22

GRANITE CONSTRUCTION, INC.

13
 14 By: M. Craig Hall
 15 M. Craig Hall, SVP, General Counsel, Corporate
 16 Compliance Officer, and Secretary

17 On _____, 2022, _____, a person known to me,
 18 personally appeared before me and acknowledged executing the foregoing Consent with full
 19 authority to do so on behalf of _____ as its _____.

20 See attached acknowledgment

 Notary Public
 Commission expires:

21 Approved as to form:
 22
 23
 24

25 John Berry, Esq.
 26 Achyut Phadke, Esq.
 27 MUNGER TOLLES & OLSEN LLP
 28 Attorneys for Defendant

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California

County of Santa Cruz)

On July 27th, 2022 before me, V. Schultz, Notary Public
(insert name and title of the officer)

personally appeared Craig Hall,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

V. Schultz
V. Schultz, Notary Public

(Seal)

